

Message Text

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ACDA-12 SY-05 TRSE-00 CA-01 SCS-06 EB-08 JUSE-00
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FM USMISSION USBERLIN
TO AMEMBASSY BONN
INFO SECSTATE WASHDC 7570
CINCUSAREUR HEIDELBERG GE

C O N F I D E N T I A L SECTION 1 OF 2 USBERLIN 2048

CINCUSAREUR FOR POLAD, AEAGC-COC & AEAGB - PDN (I&W)

E.O. 11652: GDS
TAGS: PINT, WB, US
SUBJECT: DUEPPEL: U.S. DECISION TO DENY CONSENT TO EXERCISE OF
JURISDICTION BY BERLIN COURT IN THE CASE OF DOSTAL
VS. LAND BERLIN

REF: (A) USBER 2002, (B) USBER 1974, (C) USBER 1968, (D) USBER 1874

SUMMARY: TODAY (29 AUGUST) U.S. MISSION LEGAL ADVISER DIS-
PATCHED RESPONSE TO BERLIN ADMINISTRATIVE COURT DENYING CONSENT
TO COURT'S EXERCISE OF JURISDICTION IN DUEPPEL CONSTRUCTION
CASE. USBER AND USAB PRESS OFFICERS HAVE BEEN PROVIDED CON-
TINGENCY Q'S AND A'S. SENAT IS BEING ADVISED IN ADVANCE OF U.S.
DECISION AND BEING GIVEN Q'S AND A'S FOR INFORMATION ONLY.
COMMENT: IN Q'S AND A'S WE HAVE ACKNOWLEDGED OUR RESPONSIBILITY
FOR THE FINAL DECISION TO PROCEED. WHILE WE HAVE NOTED THAT
DECISION-MAKING PROCESS WAS JOINT ONE WITH SENAT, WE TOOK PAINS
TO MINIMIZE REFERENCES TO SENAT. WE EXPECT SOME ADVERSE BUT
MANAGEABLE REACTION TO THE U.S. DECISION DENYING CONSENT.
END SUMMARY
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1. AS REPORTED REFTTEL C, LOCAL ZEHLENDORF RESIDENT,
ROSEMARIE DOSTAL, FIED REQUEST BEFORE BERLIN ADMINISTRA-
TIVE COURT FOR INJUNCTION AGAINST DUEPPEL CONSTRUCTION
PENDING REVIEW OF DECISION MAKING PROCESS FOLLOWED BY
GERMAN AUTHORITIES TO DETERMINE WHETHER GERMAN PLANNING
AND BUILDING LAWS WERE FULLY OBSERVED. COURT REFERRED

MATTER THROUGH SENATOR FOR JUSTICE TO U.S. LEGAL ADVISER WITH REQUEST FOR CONSENT TO EXERCISE JURISDICTION IN CASE, DOSTAL VS. LAND BERLIN. THIS IS STANDARD PROCEDURE IN CASES INVOLVING ALLIED FORCES. AFTER DISCUSSIONS WITH USCOB AND POLAD, USBER LEGAL ADVISER ISSUED TODAY, 29 AUGUST, NEGATIVE RESPONSE TO SENATOR FOR JUSTICE WHO WILL ADVISE COURT. LETTER FOLLOWS:

BEGIN TEXT

DEAR SENATOR MEYER:

REFERENCE IS MADE TO YOUR LETTER OF 10 AUGUST 1978 (FILE NO. 1413 E - II. 2/78) CONCERNING THE REQUEST FROM THE BERLIN ADMINISTRATIVE COURT TO GRANT, PURSUANT TO ALLIED KOMMANDATURA BERLIN LAW NO. 7, CONSENT TO THE EXERCISE OF JURISDICTION IN THE CONTENTIOUS ADMINISTRATIVE CASE OF MRS. ROSEMARIE DOSTAL VERSUS LAND BERLIN.

THE U.S. COMMANDANT BY LETTER DATED 11 JULY 1978 ORDERED DR. DETLEV HEINRICH, LEITER DER SONDERVERMOEGENS - UND BAUVERWALTUNG DER OBERFINANZDIREKTION BERLIN, TO EFFECT THE RESUMPTION OF CONSTRUCTION AT THE SITE OF DUEPPELER FELD WHICH IS THE SUBJECT OF FRAU DOSTAL'S APPLICATION. THAT ORDER IS NOT SUBJECT TO REVIEW BY THE COURT. ACCORDINGLY, CONSENT TO THE EXERCISE OF JURISCONFIDENTIAL

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DICTION IN THIS CASE IS NOT GRANTED.

THE FILE SUBMITTED WITH THE REFERENCED LETTER IS HEREWITH RETURNED.

END TEXT

2. COMMENT: ANY COURT REVIEW OF FRAU DOSTAL'S APPLICATION COULD INVOLVE REVIEW OF U.S. COMMANDANT'S DECISION TO PROCEED WITH CONSTRUCTION. THIS RESULT WOULD HAVE BEEN INCOMPATIBLE WITH STATUS OF U.S. AUTHORITIES IN BERLIN. U.S. LEGAL ADVISER CONFERRED WITH BRITISH AND FRENCH LEGAL ADVISERS ON THIS POINT; THEY CONCURRED. A COURT REVIEW WOULD ALSO HAVE DELAYED CONSTRUCTION INDEFINITELY PENDING RESOLUTION OF THE QUESTION WHETHER GERMAN LAW HAD BEEN OBSERVED. IN THAT REGARD, WHILE WE ARE SATISFIED, BASED ON SENAT ASSURANCES, THAT THE APPLICABLE PROVISIONS OF THE GERMAN CONSTRUCTION LAW WERE FOLLOWED, THE CLAIMANT ARGUES THAT THE PARAGRAPHS OF THE LAW RELIED ON BY THE SENAT TO ZONE THE PROPERTY FOR HOUSING CONSTRUCTION ARE NOT APPLICABLE. WHETHER CLAIMANT WOULD HAVE HAD EVEN PRIMA FACIE CASE IS UNCERTAIN, SINCE, AS WE UNDERSTAND

FROM SENAT ADMINISTRATORS, THE CONSTRUCTION LAW WAS ONLY
RECENTLY ENACTED AND HAS NOT YET BEEN TESTED IN OR REVIEWED
BY THE COURTS.

3. IT IS CLEAR THAT SENAT, FRENCH AND BRITISH OFFICIALS
EXPECTED THE U.S. TO DENY CONSENT TO THE EXERCISE OF JURIS-
DICTION IN DOSTAL VS. LAND BERLIN AND THAT THEY WOULD HAVE BEEN
SHOCKED BY ANY OTHER RESULT.

4. WE ANTICIPATE PRESS INQUIRIES ONCE U.S. DECISION
BECOMES KNOWN. WHILE DECISION SHOULD NOT NORMALLY
BECOME PUBLIC UNTIL COURT INFORMS FRAU DOSTAL THAT IT
CANNOT EXERCISE JURISDICTION, WE ANTICIPATE AN EARLIER
LEAK TO THE PRESS. SINCE WE WISH TO DOWN PLAY EVENT, WE
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C O N F I D E N T I A L SECTION 2 OF 2 USBERLIN 2048

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HAVE DECIDED NOT TO ISSUE PRESS STATEMENT BUT TO PREPARE
CONTINGENCY Q'S AND A'S. THESE ARE REPORTED BELOW.

5. USBER SENAT LIAISON OFFICER WILL INFORM SENAT TODAY
OF OUR DECISION AND GIVE SENAT OUR CONTINGENCY PRESS LINE

FOR INFORMATION ONLY. SENAT WILL BE ADVISED
TO DIRECT ALL PRESS INQUIRIES CONCERNING REASON FOR U.S.
DECISION TO U.S. PRESS OFFICERS. SENAT SHOULD, OF COURSE,
HANDLE OTHER QUERIES ON DUEPPEL.

6. CONTINGENCY Q'S AND A'S:

1: HAS THE U.S. COMMANDANT DECIDED TO REFUSE JURISDIC-
TION TO THE BERLIN COURTS TO REVIEW THE DUEPPEL CASE?

A: ON BEHALF OF THE COMMANDANT, THE LEGAL ADVISER OF
THE U.S. MISSION REVIEWS REQUESTS FROM BERLIN COURTS FOR
CONSENT TO THE EXERCISE OF JURISDICTION. HE HAS AD-
VISED THE SENATOR FOR JUSTICE TO INFORM THE BERLIN AD-
MINISTRATIVE COURT THAT THE U.S. AUTHORITIES HAVE NOT
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GRANTED CONSENT TO THE EXERCISE OF JURISDICTION IN THE
CASE OF ROSEMARIE DOSTAL VS. LAND BERLIN.

Q: WHY DID HE WRITE TO THE SENATOR FOR JUSTICE?

A: THAT IS STANDARD PROCEDURE.

Q: WHAT WAS THE BASIS FOR THE U.S. DECISION?

A: BASED ON PLANS AND TIME TABLE DRAWN UP IN CONSULTA-
TION WITH THE APPROPRIATE GERMAN BUILDING AUTHORITIES
AND GOVERNMENT OFFICIALS AND MUTUALLY AGREED TO BY
THOSE OFFICIALS AND THE APPROPRIATE U.S. AUTHORITIES,
THE U.S. COMMANDANT DIRECTED ON 11 JULY THAT CONSTRUCTION
BE CARRIED OUT. THE DECISION OF THE U.S. SECTOR COMMANDANT
IS NOT SUBJECT TO REVIEW BY THE BERLIN COURTS.

Q: IS THE DECISION BY THE COMMANDANT SUBJECT TO ANY
FURTHER REVIEW OR APPEAL PROCEDURE?

A: NOT THAT I AM AWARE OF.

Q: UNDER WHAT CONDITIONS WOULD THE COMMANDANT HIMSELF
RECONSIDER THE ORDER TO CONSTRUCT THE 250 HOUSING UNITS
AT DUEPPEL SOUTH?

A: THE DECISION TO BUILD AT DUEPPEL SOUTH WAS REACHED
AFTER MANY LENGTHY AND COMPREHENSIVE DISCUSSIONS BETWEEN
DISTRICT AND SENAT OFFICIALS AND REPRESENTATIVES OF THE
U.S. FORCES IN BERLIN. AS IS WILL KNOWN THE U.S., IN
RESPONSE TO A REQUEST FROM BERLIN AUTHORITIES, AGREED
ON TWO OCCASIONS TO RELOCATE THE CONSTRUCTION SITE,
AND ON ANOTHER OCCASION TO REDESIGN THE APARTMENTS TO

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FIT IN WITH THE DESIGN OF OTHER LOCAL HOUSING UNITS.

THE HOUSING IS VERY MUCH NEEDED BY OUR TROOPS AND THEIR FAMILIES. A FURTHER DELAY IN CONSTRUCTION WOULD BE UNACCEPTABLE. THE U.S. COMMANDANT CANNOT THINK OF ANY CONDITIONS, GIVEN THE FACTS PRESENTLY KNOWN, WHICH WOULD WARRANT A REVEIW OF THE DECISION REACHED JOINTLY TO CONSTRUCT THE 250 UNITS AT DUEPPEL SOUTH.

Q: WE UNDERSTAND THAT THE COMMANDANT SAID HE WOULD ONLY RECONSIDER THE BUILDING PROJECT IF THE GOVERNING MAYOR WERE TO ASK HIM TO DO SO. DOES THIS STATEMENT STILL STAND?

A: THE DECISION TO BUILD AT DUEPPEL SOUTH WAS TAKEN ONLY AFTER IT BECAME CLEAR TO GERMAN AND AMERICAN AUTHORITIES ALIKE THAT THERE WERE NO ALTERNATIVES WHICH WOULD PERMIT CONSTRUCTION TO PROCEED AND BE COMPLETED WITHOUT UNACCEPTABLE DELAYS. THE COMMANDANT INDICATED THAT HE WOULD ONLY RECONSIDER THE DECISION IF IT WERE CLEAR THAT CONSTRUCTION AT ANOTHER SITE COULD BE COMPLETED ON THE PRESENT TIME SCHEDULE. NO ALTERNATIVE SITE WAS AVAILABLE WHICH WOULD MAKE SUCH A CHANGE POSSIBLE; AND CONSTRUCTION IS PROCEEDING AT DUEPPEL SOUTH.

7. WE HAVE RECEIVED REPORT THAT KBW WILL HOLD A "FETE" ON 3 SEPTEMBER IN THE VICINITY OF DUEPPEL CONSTRUCTION SITE.

8. USCOB CONCURS. NELSON

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